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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of decision: 2nd August, 2024**

+ **CRL.M.C. 2477/2020**

PUNEET ARORA

.....Petitioner

Through: Mr. Vishal Chopra, Mr. Chetan Kumar & Mr. Narender Singh, Advocates.

versus

THE STATE (NCT OF DELHI)

.....Respondent

Through: Ms. Richa Dhawan, APP for State with Insp. Somil Sharma, Special Cell.

Mr. Rishi Kapoor, Advocate for Nodal Officer Vodafone with Mr. Shashank Tyagi, Nodal Officer of VIL.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

CRL.M.A. 11502/2023 (u/S 482 of Cr.P.C., 1973)

1. By way of present Criminal Miscellaneous Application, the applicant/petitioner seeks directions to the respondent as well as to the concerned Nodal Officers of Vodafone, to retrieve the call records of the three numbers i.e., 9990016982, 8750871521 and 8588865756.

2. It is submitted that the applicant/petitioner filed the **CRL.M.C. 19705/2021** and had sought preservation of the mobile numbers as well as of



the numbers of the mentioned persons though their mobile numbers were not known i.e., (i) 9818151086 (Constable Suman, Special Cell, PS Janakpuri); (ii) 9268217879 (Somil Sharma, IO, PS Special Cell, Janakpuri); (iii) Constable Sangita, Special Cell, PS Janakpuri; (iv) Sanjay Dutt, ACP; (v) Tilak Chand Bish, Inspector; (vi) 9999786855 (Puneet Arora, number is in the name of Meenu Arora); (vii) 9910006549 (Puneet Arora, number is in the name of Ms. Seema Makkar); and (viii) 9958875522 (Seema Makkar, D/o Shri Roop Lal Makkar, R/o H. No. 151-P, Sector 55, Gurugram, Haryana).

3. The Application was allowed *vide* Order dated 09.12.2021 and phone location records of those numbers and persons as well as call detail records of the persons who conducted raid, were preserved. Further the Telecom Service Provider Companies i.e., Airtel, Vodafone, Idea and Jio were directed to ensure that the Call Detail Records of the aforementioned persons, would be retained and preserved.

4. The petitioner sent Letter dated 31.01.2022 attaching the Order dated 09.12.2021 of this Court to the Chief Public Information Officer, Department of Telecommunications, Ministry of Communications, Government of India seeking the Call Detail Records of the aforementioned numbers, but the same information was refused to be provided.

5. Thereafter, the petitioner moved an Application before the learned Special Judge, NDPS Act for compliance of the Order dated 09.12.2021. However, the Application was dismissed *vide* Order dated 29.01.2022 by observing that there is nothing in the Order dated 09.12.2021 to ensure any compliance, and the Application was only to delay the proceedings.

6. The petitioner also filed the Application *vide* **CRL. M.A. 21627/2022**



before this Court seeking compliance of the Order dated 09.12.2021 by directing the Telecom Service Provider Companies i.e., Airtel, Vodafone, Idea and Jio to preserve Location Chart and Call Detail Records of the numbers given in the Application to file the same before the Trial Court. The Application was withdrawn by the applicant/petitioner in view of the Status Report dated 16.12.2022 filed on behalf of the State. However, the order dated 09.12.2021 had not been complied entirely and properly as the Call Detail Records of five numbers out of eight numbers, were preserved. The Service provider failed to provide the details of remaining three of whom only the names of the persons were given.

7. The petitioner has asserted that the inability of the State to provide the Call Detail Records of the mobile numbers of the said three persons is not tenable as their mobile numbers were already in the knowledge of the concerned Investigating Officer which he did not deliberately provide to the concerned Nodal Officers of Jio, Airtel and Vodafone for compliance of Order dated 09.12.2021.

8. According to the Applicant/petitioner who is facing very serious allegation for the offence under Sections 22/29 of NDPS Act, the non-supply of the requisite call detail records as well as Cell ID Location of persons as ordered by this Court *vide* Order dated 09.12.2021, has gravely infringed his Fundamental Right to fair trial as enshrined in Article 21 of the Constitution of India as it seriously prejudice his rights during the course of trial.

9. Reliance has been placed on the Orders dated 15.01.2021 and 05.02.2021 passed by a Co-ordinate Bench of this Court in BAIL APPLN. 2865/2020, to submit that the special directions were issued to Nodal Officer



of Vodafone to retrieve the Call Detail Records/Location Chart even after the lapse of the considerable time.

10. Therefore, it is submitted that the call detail records of mobile numbers i.e., 9990016982, 8750871521 and 8588865756 be retrieved by directing the Nodal Officer of Vodafone.

11. **The Status Report dated 16.12.2022** has been filed on behalf of the State that during the court of trial, an Application seeking preservation of call details/location records of Police Officials and accused-persons was filed on behalf of the applicant/petitioner before the learned Trial Court, but the same was dismissed *vide* Order dated 24.09.2020.

12. Thereafter, Criminal Revision Petition No. 327/2020 was filed before this Court against the Order dated 24.09.2020 passed by the Trial Court and the same had been dismissed *vide* Order dated 03.12.2020.

13. This Court *vide* Order dated 09.12.2021 passed in CRL.M.C. 19705/2021 disposed of the present petition by allowing the said application seeking preservation of the Call Detail Records of the aforementioned mobile numbers and by directing the Nodal Officers of Airtel, Vodafone, Idea and Jio to ensure that the call detail records of the persons mentioned in paragraph-6 (in the present application the name of the persons have been mentioned above) in the petition are retained and preserved, if presently available.

14. It is submitted on behalf of the State that in compliance of Order dated 09.12.2021, the said Order was specially marked and addressed to the Nodal Officers of Vodafone-Idea, Bharti Airtel and Reliance Jio.

15. Thereafter, the applicant/petitioner also filed the Application bearing **No. 21627/2022** seeking further directions to the respondent to comply the



Order dated 09.12.2021. A communication to that effect was also made to the Nodal Officers of Vodafone-Idea, Reliance Jio and Airtel to know the compliance of Order dated 09.12.2021.

16. The *Vodafone-Idea vide its Response dated 18.11.2022* submitted that the call records of mobile number 9999786855 for the period from 26.02.2020 10:00 A.M. to 27.02.2020 10:00 A.M. have been preserved at their end for further reference. It was also submitted that the mobile numbers i.e., 9818151086, 99100006549 and 9958875522 do not belong to Vodafone Idea Ltd. and the mobile number 9268217879 has been ported out to Bharti Airtel Ltd. on 30.09.2016.

17. The *Nodal Officer, Reliance Jio in its Response dated 19.11.2022* submitted that the call detail records of the mobile numbers as mentioned in Order dated 09.12.2021 at Paragraph-6 do not belong to Reliance Jio.

18. The *Response dated 19.11.2022 of Nodal Officer, Airtel*, stated that the Notification dated 21.12.2021 issued by the Department of Telecommunications stipulates that the Call Detail Records are required to be maintained for a period of two years against the period of one year as mentioned in prior Notification in this regard. Also, that the directions passed by this Court *vide* Order dated 09.12.2021 to preserve the call detail records are beyond the period as desired by this Court. However, in compliance of the CDR preservation request dated 13.10.2020 and 04.11.2020 received through authorised e-mail of Special Cell SWR by the Airtel for mobile numbers i.e., 9818151086, 9958875522, 9910006549 (from 26.02.2020 to 27.02.2020) and 9268217879 (from 24.02.2020 to 29.02.2020), the said Call Detail Records have been preserved and a copy has also been provided to the Special Cell SWR Wing of Delhi Police.



19. It is submitted on behalf of the State that the responses received from the Nodal Officers in compliance of Order dated 09.12.2021, the Call Detail Records of five mobile numbers out of eight, have been preserved and can be produced.

20. **The Additional Status Report dated 17.02.2023** has been filed on behalf of the State, wherein it is submitted that in continuation to the earlier Status Report dated 16.12.2022, further communication has been made with the Nodal Officers of Vodafone-Idea and Airtel.

21. *In the Response dated 10.02.2023 of Vodafone-Idea*, wherein it is submitted that call detail records of MSISDN 9999786855 have been preserved for the duration 26.02.2020 (10:00 A.M.) to 27.02.2020 (10:00 A.M.). The Call Detail Records of the mobile numbers i.e., 9990016982, 8750871521 and 8588865756 as sought, are not available as the same are two years old and as per the DoT Order No. 20-271/2010 AS-I (Vol.-III) dated 21.12.2021 *vide* which Telecom Operators are directed to maintain CDR for the communication exchanged on their network for two years.

22. *In the Response dated 13.02.2023 of Bharti Airtel*, it is stated that with reference to the Letter No. 201 dated 11.01.2022 in case FIR No. 50/2020, PS Special Cell, New Delhi, the Call Detail Records of mobile numbers i.e., 9818151086, 99100006549, 9958875522 for the period from 26.02.2020 to 27.02.2020 and 9268217879 from 24.02.2020 to 29.02.2020, earlier provided to the Special Cell SWR, Delhi *via* e-mail, have been preserved at their end. Further, the rest of the mobile numbers mentioned in the Letter No. 201 dated 11.01.2022 do not belong to Bharti Airtel Ltd.

23. In the end, it submitted on behalf of the State that the Call Detail Records of the mobile numbers i.e., 9818151086, 9910006549, 9958875522,



9268217879 and 9999786855 have been preserved. However, the Call Detail Records of mobile numbers i.e., 9990016982, 8750871521 and 8588865759 could not be preserved due to non-availability of the same.

24. Submissions heard.

25. The present petition filed on behalf of the petitioner had been disposed of *vide* Order dated 09.12.2021 along with CRL.M.A. 19705/2021 directing the Telecom Service Provider Companies, i.e., Reliance Jio, Vodafone-Idea Ltd. and Bharti Airtel to preserve the Call Detail Records of all the public witnesses. In the light of the verdict of Apex Court in Suresh Kumar vs. Union of India, 2015 (3) JCC (Narcotics) 121, the calling numbers and the numbers called from the said mobile phones shall be blacked out by the companies Airtel, Vodafone, Idea and Jio also. It was thus, directed to ensure that the Call Detail Records of the persons mentioned at in paragraph 6 herein above in the petition are retained and preserved, if presently available.

26. The applicant/petitioner filed the ***Application bearing No. CRL.M.A. 21627/2022*** seeking similar reliefs as sought in CRL.M.A. 19705/2021 as well as compliance of the Order dated 09.12.2021. However, the said Application was dismissed as withdrawn *vide* Order dated 16.03.2023 in view of the reports filed on behalf of the Telecom Service Provider Companies i.e., Vodafone, Idea, Jio and Bharti Airtel.

27. Thereafter, the present application has been filed on behalf of the applicant/petitioner seeking to preserve the call detail records of mobile numbers i.e., 9990016982, 8750871521 and 8588865756.

28. Pertinently, the responses have already been received from the Nodal Officers of Vodafone-Idea Ltd., Bharti Airtel and Reliance Jio, wherein it is



stated that the call detail records of the numbers that had been sought by the Special Cell, SWR, Delhi Police at the initial stage in 2020 have been preserved and the same can be made available. Insofar as the other call detail records were concerned, since the request has been made after a period of two years, therefore, the same is not available.

29. Also, as per the DoT Order No. 20-271/2010 AS-I (Vol.-III) dated 21.12.2021 *vide* which Telecom Operators are directed to maintain Call detail records for the communication exchanged on their network for two years.

30. Learned counsel for the petitioner has relied upon the Orders dated 15.01.2021 and 05.02.2021 passed by a Co-ordinate Bench of this Court in BAIL APPLN. 2865/2020, wherein the Nodal Officer of the Vodafone Ltd. in similar circumstances, stated that it can make an endeavour to retrieve the data manually and, therefore, was so directed.

31. It is pertinent to observe that these Call Detail Records which have been sought by the petitioner in respect of mobile numbers i.e., 9990016982, 8750871521 and 8588865756, could not be preserved as the same have been sought beyond a period of two years.

32. For the foregoing discussions, there is no merit in the present Application which is hereby, dismissed.

(NEENA BANSAL KRISHNA)
JUDGE

AUGUST 2, 2024
S.Sharma